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November 14, 2005

NANCY A. ORY
(202) 416-6791

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E-MAIL
NORY@LSL-LAW.COM

VIA COURIER

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

Re: In the Matter of Amendment of Section 73.202(b)
(Columbus and Monona, Wisconsin)
FM Table of Allotments
MB Docket No. 05-122
RM-11198

Dear Ms. Dortch:

On behalf of Good Karma Broadcasting, LLC, there is transmitted herewith an original and four copies of its Petition for Reconsideration in connection with the above-referenced matter.

Please date-stamp the enclosed "Return Copy" of this filing and return it to the courier delivering this package.

Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,

Nancy A. Ory

Enclosure

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of:

Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 05-122
FM Broadcast Stations)	RM-11198
(Columbus and Monona, Wisconsin))	

To: Assistant Chief, Audio Division, Media Bureau:

PETITION FOR RECONSIDERATION

Good Karma Broadcasting, LLC ("*Good Karma*"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of the Audio Division's Report and Order in the above-captioned proceeding. In the Report and Order, the Audio Division dismissed Good Karma's Petition for Rulemaking to amend Section 73.202(b), the FM Table of Allotments, to reallocate Channel 263A from Columbus to Monona, Wisconsin (the "*Petition*") because it relied upon an ungranted construction permit application as a "backfill" to replace the prospective loss of the sole local service to Columbus. Good Karma seeks reconsideration of the Report and Order on the grounds that it is inconsistent with prior Commission precedent, and the overall public interest.

I. Background.

On January 18, 2005, Good Karma filed its Petition to amend Section 73.202(b), the FM Table of Allotments, by deleting Channel 263A at Columbus, Wisconsin, and assigning that channel for use at Monona, Wisconsin, as that community's first local aural service. In order to prevent the loss of the sole local transmission service in Columbus that would otherwise result from Good Karma's proposed reallocation of WTLX's Channel 263A from Columbus to Monona, Good Karma simultaneously filed an application for a construction permit to change the community of license of Good Karma's WTTN(AM), 1580 kHz, from Watertown, Wisconsin, to Columbus. FCC File No. CDBS20050118AJT (the "*WTTN Application*"). Good Karma noted that, with the relocation of WTTN(AM) to Columbus, the changes sought by the Petition would not deprive that city of its only radio service.

The WTTN Application was filed in connection with AM Auction No. 84. At the time the WTTN Application was filed, the Media Bureau had already determined that Good Karma's AM Auction 84 filing window application for WTTN (FCC File No. BMJP-20040129AGA) was not mutually exclusive with any other applications submitted in the filing window. DA 04-3596 (released November 17, 2004). As such, the WTTN Application was and remains today ripe for grant upon the expiration of the petition to deny period.

Good Karma filed its Comments in support of the Petition in response to the Media Bureau's Notice of Proposed Rule Making in this proceeding (*Columbus and Monona, Wisconsin*, 20 FCC Rcd 6049 (MB 2005)). Significantly, the Notice of Proposed Rule Making was unopposed.

II. The Audio Division Failed to Apply Commission Precedent In Dismissing Good Karma's Petition.

In the Report and Order, the Audio Division declared, without citation to any meaningful or reasoned underlying authority, that Good Karma's reliance on the grant of the WTTN Application as a backfill to replace the prospective loss of service to Columbus "is not conducive to the efficient processing of petitions for rule making." Report and Order at ¶ 3. However, the Audio Division failed to acknowledge that in a recent decision it determined that grant of a rule making petition under substantially similar circumstances would advance the public interest. *See Marion and Johnston City, Illinois*, 18 FCC Rcd 15346 (Audio Division 2003). For this reason, the Audio Division should reconsider the dismissal of the Petition and apply the *Marion and Johnston City, Illinois* precedent by conditioning its grant of that Petition on Good Karma's initiation of replacement radio broadcast service at Columbus.

In *Marion and Johnston City, Illinois*, Clear Channel Broadcasting Licenses, Inc. ("*Clear Channel*") applied for a major modification of the construction permit of expanded band station WHITE(AM) (the "*Clear Channel Application*") to change the station's community of license from Johnston City, Illinois, to Berwyn, Illinois, a suburb of Chicago that is located approximately 455 kilometers, virtually the entire length of Illinois, from Johnson City. A Petition to Deny filed against the Clear Channel Application brought to the Audio Division's attention that grant of that application ultimately would result in the loss of Johnston City's sole local service when Clear Channel inevitably relinquished the license of its associated existing band station WDDD(AM), which also is licensed to Johnston City. As a result, nearly one year after it filed to relocate expanded band station WHITE(AM), Clear Channel filed a Petition for

Rule Making to amend the FM Table of Allotments to delete Channel 297B at Marion, Illinois and reallocate that channel to Johnston City as a backfill to replace the prospective loss of local service from WHITE(AM) (the "*Clear Channel Petition*").

In the Clear Channel Petition, Clear Channel requested that the Commission ignore the existence of existing band station WDDD(AM) and its associated expanded band station WHITE(AM) and treat Johnston City as if it were devoid of local service so that its backfill rulemaking proposal could be deemed to result in a preferential arrangement of allotments. Just as Good Karma's Petition is contingent on the grant of the pending major change WTTN(AM) Application to relocate that station's community of license, the Clear Channel Petition was contingent on the grant of the pending major change Clear Channel Application to relocate WHITE(AM) from Johnston City to Berwyn. For that matter, the grant of the Clear Channel Application to relocate WHITE(AM) to Berwyn was itself contingent both on grant of the Marion to Johnston City "backfill" allotment rulemaking and on grant of any subsequent implementing FCC Form 301 application for a "backfill" FM station at Johnston City.

However, despite the contingent nature of the *Clear Channel Petition*, the highly contested nature of the proceeding and their combined adverse affect on the "efficient processing of petitions for rule making," the Audio Division refused to dismiss the Clear Channel Petition. Instead, it reviewed the merits of the Clear Channel Petition and the Clear Channel Application as a single package, and analyzed the collective benefits that package promised. In light of those collective benefits, the Audio Division concluded that the public interest would best be served by the simultaneous approval of both. To ensure the integrity of the Section 307(b) process and to preserve local service to

Johnston City, it imposed a condition on the new WHITE(AM) construction permit that prohibited Clear Channel from commencing operations in Berwyn until the new local FM service at Johnston City had been initiated.

There is no material distinction between the circumstances presented in *Marion and Johnston City, Illinois* and in the instant proceeding that would justify denying Good Karma the same treatment afforded Clear Channel.¹ In each instance, the petition for rule making is contingent on the grant of an AM major change application. In each instance, the backfills proposed would prevent the loss of a community's sole local service. And in each instance, comparable collective benefits ensue from grant of the FM allotment rulemaking.

To the extent that differences exist, they weigh in favor of granting Good Karma's proposal. Unlike *Marion and Johnston City, Illinois*, a highly contested and protracted proceeding, Good Karma's Petition is uncontested. Moreover, because the WTTN Application is a singleton application, not mutually exclusive with any other applications filed during the AM Auction No. 84 filing window, it is highly unlikely that any objections to its approval will be raised. Indeed, the only existing impediment to its grant is the Commission's routine application approval procedures. Regrettably, due to the volume of AM applications on file, the WTTN Application has been pending for nearly 11 months.

In light of the Audio Division's decision in *Marion and Johnston City, Illinois*, and the overarching obligation of the Commission to treat similarly situated applicants in a similar fashion (*Melody Music, Inc. v. FCC*, 345 F. 2d 730, 732), Good Karma submits that the Audio Division erred in failing to weigh the collective benefits proposed by Good

¹ While the *Marion and Johnston City, Illinois* decision remains subject to legal challenge, it is prevailing precedent today.

Karma in the Petition and the WTTN Application, and that the dismissal of Good Karma's Petition was not warranted under the circumstances. After reviewing those collective benefits, which include the provision of first local service to Monona and increases in the net populations served by both WTLX and WTTN(AM), the public interest would be served by granting the Petition, subject to the condition that operation of WTLX at Monona cannot commence until Good Karma has initiated replacement radio broadcast service at Columbus.

III. The Newly Adopted Policy Relied Upon To Dismiss Good Karma's Petition Should Not Be Applied In This Instance.

The sole basis for the Audio Division's dismissal of Good Karma's Petition is that it is inconsistent with a processing policy announced in a footnote to a Notice of Proposed Rulemaking released less than two months ago, in September 2005. In that recent decision, the Audio Division declared that "[i]n the future, any petition for rule making which specifies an ungranted construction permit application as a 'backfill' to replace the prospective loss of a sole local service will be returned." *Aguila, Apache Junction, Buckeye, Glendale, Peoria, Wenden, and Wickenburg, Arizona* (DA 05-2495), MB Docket No. 05-270 (released September 26, 2005) ("*Aguila*"). As Good Karma has demonstrated above, the rationale for that policy – that a rule making petition's reliance on an ungranted construction permit application is somehow not conducive to the efficient processing of rule making petitions – is entirely inconsistent with the Audio Division's determination in *Marion and Johnston City, Illinois* that the approval of the Clear Channel Petition and the then pending Clear Channel Application was in the public interest.

Without arguing over the merits of this newly adopted policy, Good Karma notes that the *Aguila* policy is intended, by its terms, to apply only to rulemaking petitions "in the future." As such, Good Karma submits that the Audio Division should apply this new policy only to rule making petitions filed after September 26, 2005. Limiting the policy's enforcement to subsequently filed petitions would be more equitable as well, affecting only those petitioners that were on notice of its adoption, and would be consonant with the Commission's general reluctance to apply changes in its rules and policies retroactively. In this regard, it is noteworthy that the Commission took a prospective approach to a policy change that was relevant to the *Marion and Johnston City, Illinois* decision (the freeze on the filing of AM expanded band major change applications adopted in 17 FCC Rcd 1806). Just as the limitation on seeking major changes to expanded band stations did not apply to the parties thereto, Good Karma does not believe that the *Aguila* policy change should be applied in this instance.

In the alternative, Good Karma respectfully requests a waiver of this newly adopted processing policy.² Good Karma's Petition and the WTTN Application were filed more than eight months before the adoption of the *Aguila* policy. At that time, no such policy or other impediment existed that would have prevented favorable action in the same manner as accorded to Clear Channel in *Marion and Johnston City, Illinois*. Moreover, the WTTN Application has been awaiting Commission action for nearly 11

² Good Karma's Petition contained a request for waiver of Section 73.3517 of the Commission's Rules (47 C.F.R. §73.3517), to the extent that the Commission determined for any reason that its proposal was inconsistent with that rule, on the basis of the public interest benefits that the changes to the FM Table of Allotments proposed therein would bring. Good Karma notes the Report and Order did not afford that waiver request the "hard look" required by *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157(1969).

months, and Good Karma submits that dismissing the Petition as a result of delays in processing the WTTN Application would be inequitable.

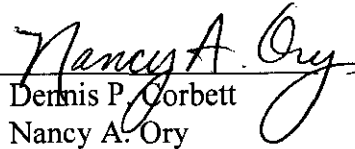
IV. Conclusion

For the reasons set forth herein, Good Karma respectfully requests that the Audio Division reconsider its decision in the Report and Order in light of *Marion and Johnston City, Illinois*, and, given the collective benefits proposed by Good Karma in the Petition and the WTTN Application, grant the Petition, subject to the condition described herein.

Respectfully submitted,

GOOD KARMA BROADCASTING, LLC

By:


Dennis P. Corbett
Nancy A. Ory
John D. Poutasse

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, D.C. 20006-1809
(202) 429-8970

November 14, 2005

Its Attorneys